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February 23, 2006

Honorable John Snow
Secretary of Treasury
Washington, DC 20220

Honorable Donald Rumsfeld
Secretary of Defense
The Pentagon
Washington, DC 20301

Honorable Alberto Gonzales
Attorney General of the United States
Department of Justice
Washington, DC 20530

Honorable Michael Chertoff
Secretary of Homeland Security
Washington, DC 20393

Dear Secretaries Snow, Rumsfeld, Chertoff, and Attorney General Gonzales:

We are writing to inquire regarding the Administration's procedures for allowing Dubai Ports World (DPW), a company based and controlled by the government of the United Arab Emirates, to take control of operations at major American ports.

At a briefing yesterday to staff of the House Armed Services, Intelligence, Homeland Security and Judiciary Committees, representatives from the Administration detailed the process they undergo for reviewing proposed transactions involving foreign investors. In that briefing, representatives from the Departments of Treasury, Homeland Security, Defense, State and others explained that after a 30-day review by the Committee on Foreign Investments in the United States (CFIUS), an inter-agency committee chaired by the Secretary of the Treasury, the members of that Committee exercise their judgment as to whether a subsequent 45-day review and preparation of a report is needed. As with almost all other cases involving foreign investment, in the case of the DPW transaction, the Bush Administration elected to forego such a review.

We have serious concerns about the described process because, as explained by the Administration, the review occurs only if the CFIUS decides in its discretion to do so. This does not appear to be a proper interpretation of the law.¹ Under 50 U.S.C. App. § 2170(b), the CFIUS

¹ The GAO has written that, "as a result of the narrow definition [of threat to national security], some issues that Defense, Homeland Security, and Justice officials believe have important national security implications, such as security of supply, may not be addressed." GAO, *Defense Trade: Enhancements to the Implementation of Exon-Florio Could Strengthen the*

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must conduct the 45-day investigation “in any instance in which an entity controlled by or acting on behalf of a foreign government seeks to engage in any merger, acquisition, or takeover which could result in control of a person engaged in interstate commerce in the United States that could affect the national security of the United States.” This amendment, known as the “Byrd Amendment” and enacted in 1993, was intended to mandate that a review occurs if the transaction in any way “could” affect our national security. Prior to the Byrd Amendment, the determination to engage in this 45-day review period was discretionary to the Administration.

If any set of facts would implicate the mandatory language of the amended statute, it would appear to be covered by the case of Dubai Ports World – the company is “controlled” by a foreign government, and the operation of United States ports clearly “could affect the national security of the United States.” As a matter of fact, the proposed acquirer of these interests, DPW, is 100% owned by the United Arab Emirates of Dubai.² The operation of our ports is already a troubling gap in our homeland security and turning over operation of some of the ports to a foreign company without further review is disturbing. Indeed at yesterday’s briefing, your representatives indicated that, at least as an initial matter, the Department of Homeland Security expressed such security concerns. If the Administration truly believed that “this deal wouldn’t go forward if we were concerned about the security for the United States of America,” as the President stated today, you would work to ensure that transactions of this nature would be subject to the full 45-day review as the law appears to require.³

Other aspects of the Administration’s review process are also troubling. We understand that little, if any, documentation reflecting the facts surrounding this acquisition and the reasons for its approval was created, including, apparently, any communication to the President informing him of the controversial decision. We are also advised that deliberations of this matter involving the members of CFIUS were scant, confined to a single meeting.

Because of the above concerns, we request answers to the following:

1. What is your legal authority for failing to conduct mandatory reviews even where security concerns could be implicated? Has this legal interpretation been reviewed and

Law’s Effectiveness. GAO-05-686 (Washington, D.C.: Sept. 2005).

²*Facts about Dubai Ports World*, Reuters (Feb. 22, 2006), available at http://today.reuters.com/investing/financeArticle.aspx?type=bondsNews&storyID=URI:urn:newsml:reuters.com:20060222:MTFH99493_2006-02-22_17-07-19_N22406644:1.

³*Bush: No need to worry about port security*, CNN.com (Feb. 23, 2006), available at <http://www.cnn.com/2006/POLITICS/02/23/port.security/index.html>.

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confirmed by anyone in the present Administration – either before or after the September 11, 2001 attacks?

2. Were memoranda or other materials prepared outlining this legal interpretation by anyone in the present Administration? If so, by whom? Please provide copies of such memoranda or other materials. Were any dissenting memoranda or other materials prepared? If so, by whom? Please provide copies of such memoranda or other materials.

3. Did the President review the decision to approve the DPW transaction? Did he delegate his mandatory authority to make these decisions to other individuals within the Administration? If so, when and to whom? Please provide a copy of any delegation materials.

4. How many foreign direct investment transactions have been approved by the Administration? How many of these have been subject to the mandatory 45-day review period required by the Byrd Amendment?

Thank you in advance for your prompt response to this inquiry. Because this transaction is scheduled to be consummated on March 2, we hope you understand this is a matter of urgent and substantial concern. Please provide your responses to 2142 Rayburn House Office Building, Washington, D.C. 20515, fax 202-225-4423.

Sincerely,

John Longenecker
Wafar Mueh
Rick Boucher
Howard N. Parnes

Chris Van Hollen
Linda J. Sanchez
T. Robert Warren

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Honorable Donald Rumsfeld
Honorable Alberto Gonzales
Honorable Michael Chertoff
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William Delahunt

Donald Nadler

Melanie Walker